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New York Federal Reserve Releases Municipal Liquidity Facility Application and Form Documents: McGuireWoods

On May 18, 2020 the New York Federal Reserve released additional information regarding the Municipal Liquidity Facility (MLF) program, including (i) a [sample application to the MLF program](#) and (ii) [multiple form documents](#) including a note purchase agreement, a note purchase commitment, a continuing disclosure undertaking, and Eligible Issuer certifications. The sample application and form documents are provided for informational purposes to assist an Eligible Issuer's understanding of the process and requirements of the MLF program. This announcement follows the Federal Reserve's release of a [pricing index](#) for the purchase of Eligible Notes by the MLF.

As described in prior guidance provided by the Federal Reserve, Eligible Issuers must first complete a [notice of interest \(NOI\)](#) and e-mail the NOI, with the required supporting documentation, to MLFnoi@blxgroup.com. Once the NOI is submitted by an authorized officer of the Eligible Issuer, the MLF administrative agent will send an email confirmation to the authorized officer. The NOI will be reviewed for completeness and compliance with the initial MLF program eligibility requirements. If the NOI is approved, the MLF administrative agent will email the authorized officer an NOI approval along with an invitation to complete an application. Applications should be submitted by invitation only.

The Note Purchase Commitment (NPC) and Note Purchase Agreement (NPA) forms provide guidance on the competitive bid and direct placement process for the MLF. For competitive bids, the purchaser of Eligible Notes (the "Purchaser") must send a completed and executed NPC to the Eligible Issuer within three business days after the Purchaser has approved the application. The NPC includes forms of its exhibits, which consist of the notice of results of the competitive bid, a certificate of the officer of the Eligible Issuer, the continuing disclosure undertaking and the language for the notice of sale. For both competitive bid and direct purchases, the Purchaser must send an executed NPA to the Eligible Issuer on (i) the pricing date for a direct purchase without competitive bid and (ii) within three business days after the Purchaser has approved the application for a fallback purchase following the competitive bid process. The NPA form contains bracketed provisions that should be included in the competitive bid structure, including references to the preliminary official statement and final official statement. The NPA form also provides templates of its exhibits, including the notice of results of the competitive bid, the certificate of the officer of the Eligible Issuer, the continuing disclosure undertaking and the language for the notice of sale.

The continuing disclosure undertaking form is consistent with the requirements of Rule 15c2-12 but also sets forth additional disclosure obligations including the requirements to provide (i) quarterly cash flows and financial reports, (ii) notice of any changes in long-term ratings applicable to the security for the Eligible Notes, and (iii) not less than six months prior to the maturity of an Eligible Note, a written report explaining the Eligible Issuer's plan to pay the Eligible Note at maturity.

The form documents also include an Eligible Issuer certification packet that provides new insight into the certifications required of Eligible Issuers. To participate in the MLF, the Eligible Issuer must

certify (i) as to its solvency pursuant to Section 13(3) of the Federal Reserve Act and the Federal Reserve System Board of Governors' Regulation A; (ii) that it is unable to secure adequate credit accommodations from other banking institutions pursuant to 13(3) of the Federal Reserve Act and the Federal Reserve System Board of Governors' Regulation A; (iii) that it is not subject to the conflict of interest requirements in Section 4019 of the CARES Act; (iv) that it is not subject to the U.S. business requirement in Section 4003(c)(3)(C) of the CARES Act; and (v) that the closing documents are identical to the forms submitted with its application. The Federal Reserve retains the right to modify the form documents.

Any additional questions regarding this process may be directed to MLFinfo@blxgroup.com.

McGuireWoods has published additional thought leadership analyzing how companies across industries can address crucial [business and legal issues related to COVID-19](#).

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